

## WORKERS' COMPENSATION DIVISION[876]

### Adopted and Filed Emergency After Notice

#### Rule making related to electronic filing

The Workers' Compensation Commissioner hereby amends Chapter 2, "General Provisions," Chapter 3, "Forms," Chapter 4, "Contested Cases," Chapter 5, "Declaratory Orders," Chapter 10, "Informal Dispute Resolution Procedures," and Chapter 11, "Electronic Data Interchange (EDI)," Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code chapter 85 and section 86.8.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 85.26, 85.27, 86.8, 86.13, 86.18, 86.24, 86.40, and 87.22.

#### *Purpose and Summary*

These amendments facilitate electronic filing of claims and Electronic Data Interchange (EDI) information and provide for electronic filing in contested cases.

#### *Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on June 5, 2019, as **ARC 4472C**. A public hearing was held on June 25, 2019, at 9:30 a.m. in Room 106, 150 Des Moines Street, Des Moines, Iowa. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

#### *Reason for Waiver of Normal Effective Date*

Pursuant to Iowa Code section 17A.5(2)"b"(1)(b), the Commissioner finds that the normal effective date of this rule making, 35 days after publication, should be waived and the rule making made effective on July 10, 2019, because this rule allows the public greater access to the agency at a reduced cost.

#### *Adoption of Rule Making*

This rule making was adopted by the Workers' Compensation Division on July 10, 2019.

#### *Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

#### *Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

#### *Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Division for a waiver of the discretionary provisions, if any, pursuant to rule 876—12.4(17A).

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rule making became effective on July 10, 2019.

The following rule-making actions are adopted:

ITEM 1. Adopt the following **new** rule 876—2.5(85,85A,85B,86):

**876—2.5(85,85A,85B,86) Use of workers' compensation electronic system (WCES) for submission of filings.** The division of workers' compensation requires the filing of electronic data interchange (EDI) information, forms, petitions, pleadings, responses, and any other submissions to be effectuated by use of the workers' compensation electronic system (WCES). The website address for WCES is [efile.iowaworkcomp.gov](http://efile.iowaworkcomp.gov). The division of workers' compensation may provide exceptions to the mandatory use of WCES in contested claims. Any electronic filing that is quarantined due to a virus will not be considered received.

**2.5(1)** The division of workers' compensation shall grant exceptions for filing in WCES for good cause, such as a power outage at the filer's office or home.

**2.5(2)** The division of workers' compensation shall grant exceptions for part or the duration of a case for good cause, such as when a filer cannot use a computer or does not have regular access to the Internet at home through a device capable of displaying documents. This inability to file in or follow the case could put a filer at a disadvantage before the agency. Only a deputy workers' compensation commissioner or the workers' compensation commissioner can grant an exception for the duration of a case.

**2.5(3)** The commissioner or the commissioner's designee shall allow the filing of paper documents in case of a systemic failure of WCES.

This rule is intended to implement Iowa Code chapters 85, 85A, 85B and 86.

ITEM 2. Adopt the following **new** rule 876—2.7(86):

**876—2.7(86) Official record.** The electronic record made and maintained by the division of workers' compensation is the official record of a case unless different means are ordered by the commissioner or deputy commissioner or unless a proceeding is not required to use WCES. The division may require parties to scan and file in WCES pleadings, exhibits and other records that were filed as paper documents before the establishment of WCES.

This rule is intended to implement Iowa Code chapters 85, 85A, 85B and 86.

ITEM 3. Adopt the following **new** rule 876—2.8(86):

**876—2.8(86) Document requirements.** Pleadings, responses to pleadings, exhibits, and transcripts submitted to the division of workers' compensation shall be scanned, attached, and filed in portable document format (pdf) or as image-on-text documents (searchable pdf). A hearing report or proposed order or proposed ruling shall be submitted in Microsoft Word format. Transcripts submitted shall include an index. Filings shall not exceed 30 megabytes (MB). Documents exceeding 30 MB shall be divided and submitted as separate attachments to comply with this size limit. All filings pursuant to this rule shall be submitted via WCES unless otherwise ordered by the workers' compensation commissioner, a deputy workers' compensation commissioner or other agency staff who have been delegated authority by the commissioner. Audio or video files shall use MP3 or MP4 format and should be submitted with a virus-scanned USB drive or DVD and shall not exceed 500 MB for each filing.

This rule is intended to implement Iowa Code chapters 85, 85A, 85B and 86.

ITEM 4. Adopt the following new rule 876—2.9(86):

**876—2.9(86) Effective date of WCES rules.** All rules and forms of the division of workers' compensation that relate to WCES shall be effective July 16, 2019, for EDI filing and July 22, 2018, for filing in claims before the agency, or when WCES is available to the public, whichever is later.

This rule is intended to implement Iowa Code chapters 17A, 85, 85A, 85B and 86.

ITEM 5. Amend subrule 3.1(2) as follows:

**3.1(2) Subsequent report of injury (SROI).**

a. The subsequent report of injury (SROI) provides for filing of notice of commencement of payments, correcting erroneous claim information, supplying additional information, denying compensability, agreeing to the weekly benefit rate and agreeing to make payments under the Workers' Compensation Act, reporting the status of a claim, or recording benefits paid. Notice of commencement of payments shall be filed within 30 days of the first payment. When liability on a claim is denied, a letter shall be sent to claimant stating reasons for denial. The ~~subsequent report of injury (SROI)~~ SROI shall also be filed when compensation is terminated or interrupted. Medical data supporting the action taken shall be filed when temporary total disability or temporary partial disability exceeds 13 weeks or when the employee sustains a permanent disability. ~~In the event the transmission of a subsequent report of injury (SROI) contains errors (TE), the errors shall be corrected within 15 days of the date of notification by the agency.~~

b. The employer and insurance carrier who are required to file medical data shall file the medical data in WCES. The employer or insurance carrier or the employer's or insurance carrier's agent shall register in WCES to file the medical data. The filer will receive a status update for the information the filer submits based upon the status the filer selects and for which the filer is approved in WCES.

ITEM 6. Rescind and reserve subrule **3.1(6)**.

ITEM 7. Amend subrule 3.1(7) as follows:

**3.1(7) Form—original notice and petition.** The following forms are types of original notice and petition: original notice and petition—Form 100 (Form No. 14-0005); original notice, petition, answer and order concerning independent medical examination—Form 100A (Form No. 14-0007); answer and order concerning independent medical examination—Form 100A (Form No. 14-0007A); original notice, petition, answer and order concerning vocational rehabilitation program benefit—Form 100B (Form No. 14-0009); answer concerning vocational rehabilitation program benefit—Form 100B (Form No. 14-0009A); original notice, petition, and answer concerning application for alternate medical care—Form 100C (Form No. 14-0011); answer concerning application for alternate medical care—Form 100C (Form No. 14-0011A); original notice, petition, and answer concerning application for vocational training and education—Form 100D (Form No. 14-0012); answer concerning application for vocational training and education—Form 100D (Form No. 14-0012A); original notice and petition for full commutation of all remaining benefits of ten weeks or more 876 IAC 6.2(6)—Form 9 (Form No. 14-0013); checklist for full commutation (Form No. 14-0015); original notice and petition and order for partial commutation—Form 9A (Form No. 14-0017); and checklist for partial commutation (Form No. 14-0019). See rule 876—4.6(85,86,17A) for further descriptions.

ITEM 8. Amend subrule 3.1(8) as follows:

**3.1(8) Form ~~No. 15~~—subpoena.** (Form No. 14-0035) This form is the witness subpoena, which is used to require a witness to appear and testify. ~~Form No. 14-0033 is, and~~ the Subpoena Duces Tecum, which is used to require a witness to appear and to bring specified books and records.

ITEM 9. Rescind and reserve subrule **3.1(14)**.

ITEM 10. Adopt the following new subrule 3.1(26):

**3.1(26) Form—application to defer payment of filing fees, financial affidavit and order.** (Form No. 14-0075) This form is used to request a deferral of payment of filing fees. This form is not initially filed through WCES.

ITEM 11. Adopt the following **new** subrule 3.1(27):

**3.1(27)** *Form—claimant’s confidential information sheet. (Form No. 14-0171)* This form is used to provide details about the claimant’s identifying information so that claims may be matched in WCES. This form is required to be filed by a claimant when the claimant is excused from using WCES.

ITEM 12. Adopt the following **new** subrule 3.1(28):

**3.1(28)** *Form—nonelection of workers’ compensation or employers’ liability coverage. (Form No. 14-0175)* This form is used for exclusion from liability coverage pursuant to Iowa Code section 87.22.

ITEM 13. Adopt the following **new** subrule 3.1(29):

**3.1(29)** *Form—application to be excused from filing in WCES. (Form No. 14-0176)* This form is used by a self-represented party to request permission to file and serve documents in paper form and be excused from using WCES.

ITEM 14. Amend rule 876—4.3(85,85A,86,87), introductory paragraph, as follows:

**876—4.3(85,85A,86,87) Compliance proceedings.** If the workers’ compensation commissioner shall have reason to believe that there has not been compliance with the workers’ compensation law by any person or entity, the commissioner may on the commissioner’s own motion give notice to the person or entity and schedule a hearing for the purpose of determining whether or not there has been compliance by the person or entity. The notice shall state the time and place of the hearing and a brief statement of the matters to be considered. The notice of hearing may be given by ordinary mail or by WCES if the alleged noncompliant person or entity is registered in WCES and is currently participating in a contested case using WCES and may be given to the insurer for the employer in lieu of the employer as permitted by Iowa Code section 87.10 if the insurer has filed a report, pleading or motion that acknowledges that it is the insurer for the claim at issue. Following the hearing, the commissioner may issue a finding regarding compliance. In the event a failure to comply is found, the commissioner may impose sanctions in accordance with Iowa Code ~~sections~~ section 86.12, 86.13 or 86.13A or order compliance within a specified time and under specified circumstances. The workers’ compensation commissioner may file a certified copy of the order in an appropriate district court and may file a certified copy of the order with the Iowa insurance division [~~commerce department~~] of the department of commerce with a request for action by the insurance division upon failure to comply with the order.

ITEM 15. Amend rule 876—4.7(86,17A), introductory paragraph, as follows:

**876—4.7(86,17A) Delivery of notice, orders, rulings and decisions.** Delivery of the original notice shall be made by the petitioning party as provided in Iowa Code section 17A.12(1) except that a party may deliver the original notice on a nonresident employer as provided in Iowa Code section 85.3. A proposed or final decision, order or ruling may be delivered by the division of workers’ compensation to any party by regular mail, by email or by WCES. Filing of a notice, ruling and decision in WCES is the official filing and start of any appeal or motion deadline. Parties registered in WCES for a claim will be sent a courtesy email informing the parties of a filing. ~~On or after July 1, 2009, a proposed or final decision, order or ruling may be delivered by the division of workers’ compensation to any party by email.~~

ITEM 16. Amend subrule 4.8(2) as follows:

**4.8(2)** Filing fee.

a. No change.

b. ~~One A filing fee shall be required for as many original notices and petitions as are filed on the same day on account of one employee against a single alleged employer or against entities alleged to be employers in the alternative or alleged to be dual employers.~~ each original notice and petition filed, as required in paragraph 4.8(2) “a.” If filing fees have been overpaid, the amount overpaid shall be refunded to the party who made the overpayment.

c. and d. Rescinded IAB 11/27/02, effective 1/1/03.

e. and f. No change.

g. The filing fee shall be paid at the same time the petition is filed. The filing fee shall be paid electronically with a credit card or electronic check or by other electronic means as allowed by WCES. Checks should be made payable to the “Iowa Division of Workers’ Compensation.” If the payment of the filing fee is made by an insufficient funds check or a check on which payment is stopped or a check on which payment is otherwise not honored, it will be treated as a failure to pay the correct filing fee. See 4.8(2) “e.” ~~One check may be submitted for payment of more than one filing fee if more than one filing fee is due from a petitioner for cases filed on account of an employee. Separate checks must be submitted for each petitioner’s case or cases. Nonelectronic payment will not be accepted without an order granting permission for nonelectronic payment. Any statute of limitations is not tolled if a party has requested nonelectronic payment and is awaiting an order.~~

h. The workers’ compensation commissioner may accept for filing an original notice and petition without prepayment of the filing fee if in the discretion of the workers’ compensation commissioner the petitioner is unable to pay the fee at the time of filing. A deferral of payment of the filing fee shall only be granted upon written application by the petitioner. The application shall be filed at the same time the original notice and petition is filed. The application shall be in the form required by the workers’ compensation commissioner and shall include an affidavit signed by the petitioner. When payment of the filing fee is deferred, provisions for payment of the filing fee must be included in any settlement submitted to the workers’ compensation commissioner for approval or taxed as costs. When the application for deferral of payment of the filing fee is denied, the filing fee shall be paid as ordered. See 4.8(2) “e.” The form for the application deferral of prepayment of fees (Form No. 14-0075) shall not be filed using WCES. The document shall be filed in paper form. If the request for deferral of fees is granted, a claim will be established in WCES. Parties to the claim shall use WCES for future filings, unless a party has been excused from using WCES.

i. Rescinded IAB 1/29/97, effective 3/5/97.

j. Parties shall use the payment gateway in WCES to pay filing fees, unless an order has been issued allowing deferral of the payment of the filing fee or payment outside of WCES. In addition to the filing fee, the parties shall pay the convenience fee charged by the financial institution that is processing payment for WCES. This cost may be recoverable under rule 876—4.33(86).

ITEM 17. Amend rule 876—4.9(17A), introductory paragraph, as follows:

**876—4.9(17A) Appearance and responses, pleading—and pleadings, motions and settlements.** ~~Responses~~ Appearances and responses to pleadings and motions shall be made as follows: using the division of workers’ compensation’s WCES. Registration with the division of workers’ compensation’s WCES is required. Registration is accepted at [efile.iowaworkcomp.gov](http://efile.iowaworkcomp.gov). After a matter has been commenced and the respondent has been served with original notice and filed an answer or appearance, subsequent filings or submissions in WCES do not require proof of service to parties of record who are registered with WCES. Attorneys will need to use the AT pin or pro hac vice pin assigned by the Iowa Supreme Court to be associated with a case in WCES. When an attorney is not representing a party, the employer or insurance carrier or the employer’s or insurance carrier’s agent or claimant shall register in WCES to file the settlement or medical data pursuant to 876—subrule 3.1(2). The filer will receive a status update for the information the filer submits based upon the status the filer selects when registering in WCES.

ITEM 18. Amend subrule 4.9(1) as follows:

**4.9(1) Respondent—appearance.** ~~A respondent shall appear by filing an answer or a motion within 20 days after the service of the original notice and petition upon the respondent. The appearance shall include the email address and the fax number of the respondent, if available, if the respondent is not represented by counsel. The caption of an answer shall disclose the file number of the compliance file in which the first report of injury was filed for the injury that is alleged in the original notice and petition. A respondent shall file a response by answer or motion by using WCES for all claims in which a petition was filed within WCES unless permission has been granted to be excused from using WCES.~~

ITEM 19. Amend subrule 4.9(6) as follows:

**4.9(6) *Form, submission and ruling on motions.*** All motions, including pre-answer motions, and motions for summary judgment and applications for adjudication of law points, shall have appended to them a concise memorandum brief and argument. All motions and applications ~~for adjudication of law points~~ except motions for summary judgment shall be deemed submitted without hearing on the record presented on the tenth day following filing. Motions for summary judgment shall be deemed submitted as provided in Iowa Rule of Civil Procedure 1.981. Resistances to motions ~~and applications for adjudication of law points~~ shall have appended to them a concise memorandum brief and argument, and shall be filed on or before the date of submission. Briefs and arguments are waived unless appended to the motion, application or resistance.

An order may be entered consolidating any motion for ruling with hearing of the contested case. Any party desiring a ruling on a motion prior to hearing may concisely set forth the necessity of prior ruling in the motion, application or resistance. If a pre-answer motion alleging lack of jurisdiction is overruled or consolidated with hearing of the contested case, the party shall plead to the merits and proceed to hearing of the contested case without submitting to the jurisdiction of the workers' compensation commissioner. If a motion attacking a pleading is consolidated with hearing of the contested case, the party shall respond to the pleading in the same manner as if the motion had been overruled.

ITEM 20. Amend subrule 4.9(8) as follows:

**4.9(8) *Withdrawal of counsel.*** Counsel may withdraw if another counsel has appeared or if the client's written consent accompanies the withdrawal.

Under all other circumstances, counsel may withdraw only upon the order of the workers' compensation commissioner after making written application. Counsel shall give the client written notice that the client has the right to object to the withdrawal by filing written objections and a request for a hearing to the Division of Workers' Compensation, 1000 East Grand Avenue, Des Moines, Iowa 50319, when filing by mail, or 150 Des Moines Street, Des Moines, Iowa 50319, when filing in person, within ten days following the date the notice was mailed or personally delivered to the client. The client's response does not need to be filed in WCES but may be mailed or delivered to the division. Counsel's application shall be accompanied by proof that a copy of the application and notice was sent by certified mail addressed to the client's last-known address or was delivered to the client personally. If no objections are timely filed, the withdrawal will become effective when approved by the workers' compensation commissioner. If objections are timely filed, a hearing on the application will be held. No withdrawal under this subrule will be effective without the approval of the workers' compensation commissioner. The filing of an application to withdraw stays all pending matters until a ruling is made on the application.

ITEM 21. Adopt the following **new** subrule 4.9(10):

**4.9(10) *Pro hac vice.*** An out-of-state attorney desiring to appear pro hac vice in an Iowa division of workers' compensation case is required to access the office of professional regulation (OPR)/supreme court commissions (SCC) website, submit certain personal information to complete pertinent fields in the lawyer database, and pay a fee that will be deposited in the client security trust fund. The registration and fee payment allow the attorney to apply to appear pro hac vice in Iowa division of workers' compensation cases, subject to the limits and requirements of Iowa Court Rule 31.14, for a period of up to five years from the date of registration. Attorneys who register and pay the fee appear in the OPR/SCC database with the status of "pro hac vice." The Iowa division of workers' compensation will request from the Iowa courts that a pro hac vice number be issued and will provide that number to the out-of-state attorney for registration with WCES. The affiliated in-state attorney shall file in WCES the application to appear pro hac vice completed by the out-of-state attorney using a pleading that is substantially similar to Iowa Court Rule 31.25—Form 1.

ITEM 22. Amend rule 876—4.11(86), introductory paragraph, as follows:

**876—4.11(86) *Signatures on documents and papers.*** All documents and papers required by these rules, the Iowa rules Rules of civil procedure Civil Procedure as applicable, or a statutory provision shall

be signed by the party if unrepresented or the party's attorney if represented. The party's signature in addition to the attorney's signature shall be necessary only when otherwise required by these rules, the Iowa rules ~~Rules of civil procedure~~ Civil Procedure as applicable, and any statutory provision. Iowa R. Elec. P. 16.305 concerning signatures is applicable to WCES.

ITEM 23. Amend rule 876—4.13(86), introductory paragraph, as follows:

**876—4.13(86) Method of service.** Except as provided in 876—4.6(85,86,17A) and 876—4.7(86,17A), service of all documents and papers to be served according to 876—4.12(86) and 876—4.18(85,86,17A) or otherwise upon a party represented by an attorney shall be made upon the attorney unless service upon the party is ordered by the workers' compensation commissioner. Service upon the attorney or party shall be made by delivery of a copy to or mailing a copy to the last-known address of the attorney or party, or if no address is known, by filing it with the division of workers' compensation using WCES once a party or party's attorney has registered in WCES for the claim being contested. If a party has been allowed to not file with WCES or if a party or attorney has not appeared in WCES, service upon the attorney or party shall be made by delivery of a copy or mailing a copy to the last-known address of the attorney or party or, if no address is known, by filing a copy with the division of workers' compensation. Delivery of a copy within this rule means: Handing it to the attorney or party; leaving it at the office of the attorney or party's office or with the person in charge of the office; or if there is no one in charge of the office, leaving it in a conspicuous place in the office; or if the office is closed or the person to be served has no office, leaving it at the person's dwelling house, or usual place of abode with some person of suitable age and discretion who is residing at the dwelling or abode. Service by mail under this rule is complete upon mailing. Documents that are served on a party for discovery and medical evidence under 876—4.14(86) and 876—4.18(17A,85,86) are not to be filed with the division of workers' compensation. No documents or papers referred to in this rule shall be served by the workers' compensation commissioner.

ITEM 24. Amend rule 876—4.15(86), introductory paragraph, as follows:

**876—4.15(86) Proof of service.** Proof of service of all documents and papers to be served on another party under 876—4.12(86) shall be filed with the division of workers' compensation promptly, and, in any event, before action is to be taken thereon by the workers' compensation commissioner or any party unless a responsive pleading has been filed. The Proof shall be made by filing the document in WCES when another party is registered in WCES for that claim. If a party or a party's attorney or representative is not in WCES for the claim being contested, the proof shall show the date and manner of service and may be by written acknowledgment of service, by certification of a member of the bar of this state, by affidavit of the person who served the papers, or by any other proof satisfactory to the workers' compensation commissioner.

ITEM 25. Amend subrule 4.19(3) as follows:

**4.19(3)** For contested cases that were filed on or after July 1, 2004, the following time limits govern prehearing procedure, completion of discovery and case management in contested cases, except proceedings under rules 876—4.46(17A,85,86) and 876—4.48(17A,85,86) and except when otherwise ordered by the workers' compensation commissioner or a deputy workers' compensation commissioner.

a. Within 120 days, ~~but not less than 60 days,~~ following filing of a petition, the counsel of record for all parties and all pro se litigants shall request a hearing by using WCES when this function is available to the public in WCES. In a case for which permission has been granted to be excused from using WCES, counsel of record for all parties and all pro se litigants shall jointly contact the hearing administrator by telephone at (515)281-6621 ~~725-3891~~ between the hours of 8:30 a.m. and 11 a.m. central time, Monday through Friday, excluding holidays, or by email at [dwc.hearing@iwd.state.ia.us](mailto:dwc.hearing@iwd.state.ia.us) to schedule a hearing date, place and time. Claimant has primary responsibility for initiating the contact. The parties shall identify the case by file number and the names of the parties and request that the hearing be set at a specific date, place and time that is shown to be available on the hearing scheduler published on the division's website. Primary and backup times must be requested for hearings in venues other than Des Moines. When the contact is made by email, a copy of the request shall be sent to each opposing party, and

the hearing administrator will reply indicating whether or not the case is assigned at the time requested. If a request is denied, the parties shall continue to contact the hearing administrator by telephone or email until the case is scheduled or a prehearing conference is ordered. A joint scheduling contact may be initiated by any party at any other time agreeable to the parties. If more than 120 days have elapsed since the petition was filed, any party may move to schedule the hearing at a particular date, time and place that is available and the hearing administrator may assign the case for hearing at ~~that~~ any date, time and place. The hearing date shall be within 12 months following the date the petition was filed or as soon thereafter as reasonably practicable as determined by the hearing administrator. If the parties fail to schedule the hearing with the hearing administrator, the case will be scheduled at the discretion of the hearing administrator without prior notice to the parties.

*b. and c.* No change.

*d.* At least 30 days before hearing, counsel of record and pro se litigants shall serve a witness and an exhibit list on all opposing counsel and pro se litigants and exchange all intended exhibits that were not previously required to be served. The witness list shall name all persons, except the claimant, who will be called to testify at the hearing or who will be deposed prior to the hearing in lieu of testifying at the hearing. The witness and exhibit lists are not filed in WCES. If the exhibit list does not contain actual exhibits, the exhibit list must specifically identify each exhibit in a way that permits the opposing party to recognize the exhibit. The description for a document should include the document's date, number of pages and author or source. Exhibits that were specifically identified when served pursuant to rule 876—4.17(17A,85,86) or in a discovery response may be collectively identified by describing the service such as "exhibits described in the notices served pursuant to rule 876—4.17(17A,85,86) on May 7, June 11 and July 9, 2004." Blanket references such as "all medical records," "personnel file" or "records produced during discovery" do not specifically identify an exhibit. A party may serve a copy of the actual intended exhibits in lieu of an exhibit list. At least 14 days before hearing, counsel of record and pro se litigants shall file proposed exhibits in WCES or, if the counsel of record and pro se litigants are excused from using WCES, shall file the proposed exhibits with the division of workers' compensation. Counsel of record and pro se litigants shall file all written objections and motions to exclude evidence at least seven days before the hearing. Objections to exhibits are waived if they are not filed at least seven days before the hearing. Evidentiary depositions pursuant to Iowa Code section 86.18(2) may be taken at any time before the hearing in lieu of the witness testifying at the hearing.

*e.* If evidence is offered at hearing that was not disclosed in the time and manner required by these rules, as altered by order of the workers' compensation commissioner or a deputy workers' compensation commissioner or by a written agreement by the parties, the evidence will be excluded if the objecting party shows that receipt of the evidence would be unfairly prejudicial. Sanctions may be imposed pursuant to 876—4.36(86) in addition to or in lieu of exclusion if exclusion is not an effective remedy for the prejudice. If a party offers an exhibit or document in paper form which is accepted by the workers' compensation commissioner or a deputy workers' compensation commissioner, the party shall have five working days to submit an electronic copy of the document by using WCES.

*f.* ~~Counsel~~ At least 14 days before the hearing, counsel of record and pro se litigants shall prepare and file a joint hearing report that defines the claims, defenses, and issues that are to be submitted to the deputy commissioner who presides at the hearing. The hearing report shall be filed in Microsoft Word format as a proposed hearing report. After the hearing report is finalized at the hearing, the deputy commissioner or a party shall save and file the completed hearing report as a pdf or scanned document in WCES. The hearing report shall be signed by all counsel of record and pro se litigants and submitted to the deputy when the hearing commences.

*g.* If a filer is unable to meet a nonjurisdictional filing deadline because of a technical failure in WCES, the filer must file the document using the earliest available electronic or nonelectronic means. The filing of the document will be accepted by the division of workers' compensation as timely unless the commissioner or deputy commissioner determines that the untimely filing of the document should not be excused.

*h.* Jurisdictional deadlines, including but not limited to any applicable statute of limitations, cannot be extended. It is the filer's responsibility to ensure that a document is filed timely to comply with



jurisdictional deadlines. A technical failure, including a failure of WCES, will not excuse a failure to comply with a jurisdictional deadline.

*i.* A filer is not excused from missing a jurisdictional or nonjurisdictional filing deadline because of problems attributable to the filer (such as telephone line problems, problems with the filer's Internet service provider, hardware problems, software problems, etc.).

ITEM 26. Amend rule 876—4.24(17A,86) as follows:

**876—4.24(17A,86) Rehearing.** Any party may file an application for rehearing of a proposed decision in any contested case by a deputy commissioner or a decision in any contested case by the workers' compensation commissioner within 20 days after the issuance of the decision. A If a party has been allowed to file not using WCES or a party to the claim is not in WCES, a copy of such application shall be timely mailed by the applicant to all parties of record not joining therein. An application for rehearing shall be deemed denied unless the deputy commissioner or workers' compensation commissioner rendering the decision grants the application within 20 days after its filing. For purposes of this rule, motions or requests for reconsideration or new trial or retrial or any reexamination of any decision, ruling, or order shall be treated the same as an application for rehearing.

This rule is intended to implement Iowa Code chapters 17A, 85, 85A, 85B and 86.

ITEM 27. Amend subrule 4.28(2) as follows:

**4.28(2) Cross-appeals.** In the event of a cross-appeal, appellee (cross-appellant) shall serve its brief within 20 days after service of the brief of appellant. Appellant (cross-appellee) shall serve its responsive reply brief within 20 days after service of the brief of appellee. Appellee (cross-appellant) may serve a reply brief within 10 days after service of appellant's reply brief. ~~When both parties appeal, the first to serve notice of appeal shall be appellant unless both serve their notice on the same date, in which case the claimant shall be appellant.~~ When more than one party appeals, the party filing the first notice of appeal will be designated the appellant and the party filing a subsequent notice of appeal will be designated the cross-appellant.

ITEM 28. Amend rule 876—4.29(86,17A), introductory paragraph, as follows:

**876—4.29(86,17A) Review upon motion.** Except as provided in 876—4.25(17A,86) the commissioner may review the decision, order or ruling of a deputy commissioner in any contested case upon the commissioner's own motion. Except as provided in 876—4.25(17A,86), the motion to review a decision, order or ruling in all contested cases must be filed within 20 days of the filing of the decision, order or ruling. The commissioner shall specify in a notice filed in WCES or mailed to the parties by certified mail, return receipt requested, on the date of filing of the motion the issues to be reviewed and the additional evidence, if any, to be obtained by the parties. The hearing under this rule shall be heard in Polk County or in any locality designated by the workers' compensation commissioner.

ITEM 29. Amend rule 876—4.33(86), introductory paragraph, as follows:

**876—4.33(86) Costs.** Costs taxed by the workers' compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, including convenience fees incurred by using the WCES payment gateway, and (8) costs of persons reviewing health service disputes. Costs of service of notice and subpoenas shall be paid initially to the serving person or agency by the party utilizing the service. Expenses and fees of witnesses or of obtaining doctors' or practitioners' reports initially shall be paid to the witnesses, doctors or practitioners by the party on whose behalf the witness is called or by whom the report is requested. Witness fees shall be paid in accordance with Iowa Code section 622.74. Proof of payment of any

cost shall be filed with the workers' compensation commissioner before ~~it is~~ costs are taxed. The party initially paying the expense shall be reimbursed by the party taxed with the cost. If the expense is unpaid, it shall be paid by the party taxed with the cost. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case unless otherwise required by the ~~rules of civil procedure~~ Iowa Rules of Civil Procedure governing discovery.

ITEM 30. Amend rule 876—4.39(17A,86) as follows:

**876—4.39(17A,86) Filing by facsimile transmission (fax).** ~~All~~ When permission has been granted to be excused from using WCES, all documents filed with the agency pursuant to this chapter and Iowa Code section 86.24 except an original notice and petition requesting a contested case proceeding (see Iowa Code section 17A.12(9)) may be filed by facsimile transmission (fax). A copy shall be filed for each case involved. A document filed by fax is presumed to be an accurate reproduction of the original. If a document filed by fax is illegible, a legible copy may be substituted and the date of filing shall be the date the illegible copy was received. The date of filing by fax is the date the document is received by the agency. The agency will not provide a mailed file-stamped copy of documents filed by fax. The agency fax number is (515)281-6501.

This rule is intended to implement Iowa Code chapters 17A, 85, 85A, 85B and 86.

ITEM 31. Amend subrule 4.48(8) as follows:

**4.48(8) Notice of hearing.** The workers' compensation commissioner will notify the parties by ordinary mail, ~~or~~ by facsimile transmission (fax) or by WCES of the time, place and nature of hearing. No notice will be made until a proper application is received by the workers' compensation commissioner. The notice will specify whether the hearing will be by telephone, ~~or~~ in person or by other digital means.

ITEM 32. Amend subrule 4.48(12) as follows:

**4.48(12) Hearing.** The hearing will be held ~~either~~ by telephone, ~~or~~ in person or by other digital means in Des Moines, Iowa. The employer shall have the right to request an in-person hearing if the employee has requested a telephone hearing in the application. The employer shall on the record respond to the allegations contained in the application. The hearing will be electronically recorded. If there is an appeal of a proposed decision or judicial review of final agency action, the appealing party is responsible for filing a transcript of the hearing.

~~If the hearing was electronically recorded, copies~~ Copies of the tape recording will be provided to the parties. A transcript shall be provided by the appealing party pursuant to Iowa Code ~~subsection~~ section 86.24(4) and a copy thereof shall be served on the opposing party at the time the transcript is filed with the workers' compensation commissioner unless the parties submit an ~~agreed~~ agreed-upon transcript. If a party disputes the accuracy of any transcript prepared by the opposing party, that party shall submit its contentions to the workers' compensation commissioner for resolution. Any transcription charges incurred by the workers' compensation commissioner in resolving the dispute shall be initially paid pursuant to Iowa Code ~~subsection~~ section 86.19(1) by the party who disputes the accuracy of the transcript prepared by the appellant.

ITEM 33. Amend subrule 4.50(3) as follows:

**4.50(3) Application for vocational training and education.**

*a.* An application shall:

- ~~a.~~ (1) Only concern the issue of vocational training, education, and supplies;
- ~~b.~~ (2) Be filed on the form provided by the division of workers' compensation;
- ~~c.~~ (3) State the reasons for the application;
- ~~d.~~ (4) Be served on the other party;
- ~~e.~~ (5) Contain a proof of service on the other party; and
- ~~f.~~ (6) Specify whether a telephone or in-person hearing is requested.

*b.* An application for vocational training and education must be filed in WCES unless permission has been granted to file paper documents. Applicant(s) must serve a copy of this form on the appellee(s) by certified mail, return receipt requested, or by personal service as in civil actions in accordance with rule

876—4.7(86,17A) and mail a copy to the attorney of record for the appellee(s), if known, in accordance with rule 876—4.13(86).

ITEM 34. Adopt the following new rule 876—4.51(86):

**876—4.51(86) Agency notice of judicial review matters.** A party who petitions for judicial review is responsible for filing with the division of workers' compensation's WCES a copy of the petition for judicial review within ten days of filing the petition with a district court. A party shall also file a copy of each appellate court decision within ten days of the date the appellate court decision was issued and filed. Within 45 days of the filing of the final appellate court decision, the same party shall notify the division of workers' compensation of the result of the appellant process.

This rule is intended to implement Iowa Code chapters 17A, 85, 85A, 85B and 86.

ITEM 35. Adopt the following new rule 876—4.52(86):

**876—4.52(86) Rules of electronic procedure.** Chapter 16 of the Iowa Court Rules of Electronic Procedure shall govern the use and filings in WCES for contested case proceedings before the workers' compensation commissioner unless the provisions are in conflict with these rules and Iowa Code chapters 85, 85A, 85B, 86, 87 and 17A or obviously inapplicable to the workers' compensation commissioner. In those circumstances, these rules or the appropriate Iowa Code section shall govern. Where appropriate, reference to the word "court" shall be deemed reference to the "workers' compensation commissioner or deputy workers' compensation commissioner," reference to the word "trial" shall be deemed reference to "contested case hearing," and reference to "clerk of court" shall be deemed reference to staff at the division of workers' compensation.

This rule is intended to implement Iowa Code chapters 17A, 85, 85A, 85B and 86.

ITEM 36. Amend rule 876—5.1(17A), introductory paragraph, as follows:

**876—5.1(17A) Petition for declaratory order.** Any person may file a petition with the workers' compensation commissioner for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the workers' compensation commissioner, at the office of the workers' compensation commissioner. Parties shall not use WCES for declaratory order proceedings. A petition is deemed filed when it is received by that office. The workers' compensation commissioner shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the agency an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

ITEM 37. Adopt the following new subrule 10.3(5):

**10.3(5)** WCES shall not be used for health service dispute matters.

ITEM 38. Amend rule 876—11.2(85,86) as follows:

**876—11.2(85,86) Definitions.** The following definitions apply to 876—Chapter 3 and this chapter.

*"EDI" or "electronic data interchange"* means electronic transmission or reception, or both, of data through a telecommunications process utilizing a value-added network or the Internet as set forth in the EDI partnering agreement.

*"EDI partnering agreement"* means the written agreement between an entity and the division of workers' compensation specifying the terms and manner of reporting by EDI.

*"Filed"* means receipt and acceptance of a report by the division of workers' compensation. A report is considered to be "filed" on the date it is accepted (TA) by the division of workers' compensation. A report that is submitted but rejected (TR) is not considered "filed." ~~A report that is accepted with errors (TE) must be corrected within five days after the acknowledgement is sent.~~

~~*"Implementation plan"* means the written document prepared by a reporter specifying a timetable for reporting by EDI.~~

*"Report"* means a first report of injury (FROI) or a subsequent report of injury (SROI), or both.

*“Reporter”* means the person who is responsible for reporting to the division of workers’ compensation pursuant to the Iowa workers’ compensation laws and includes an employer, an employer who has been relieved from insurance pursuant to Iowa Code section 87.11, and an insurance carrier which provides an employer workers’ compensation insurance.

*“Reporting”* means submission of claims data and data fields of information of a report.

ITEM 39. Amend rule 876—11.3(85,86) as follows:

**876—11.3(85,86) Form of reporting.** The format of EDI reporting must be the current version of the International Association of Industrial Accident Boards and Commissions (IAIABC) Release 2 3.1 FROI/SROI.

ITEM 40. Rescind and reserve rule **876—11.5(85,86)**.

ITEM 41. Amend rule 876—11.6(85,86) as follows:

**876—11.6(85,86) Mandatory reporting deadline.** All reporters must sign a partnering agreement and begin reporting by EDI Release 3.1 no later than ~~July 1, 2001~~ July 16, 2019, or when WCES is available to the public, whichever is later. Reporting by any means other than EDI Release 3.1 after ~~July 1, 2001~~ July 16, 2019, will not be acceptable, unless WCES is not available to the public. Reporters are responsible for reporting by EDI. A reporter may contract with another entity for reporting, but the reporter is ultimately responsible for reporting. Any entity reporting on behalf of a reporter must also sign an EDI partnering agreement.

ITEM 42. Amend rule 876—11.7(85,86) as follows:

**876—11.7(85,86) Required reports.**

**11.7(1)** A reporter shall file reports as required by Iowa Code sections 86.11, 86.12, and 86.13, 876—subrules 3.1(1) and 3.1(2), this chapter and the partnering agreement. Reports required to be filed include, but are not limited to, the following:

- a. First report of injury (FROI). See 876—subrule 3.1(1);
- b. Subsequent report of injury (SROI). See 876—subrule 3.1(2);
- c. Annual report on every claim that is open on June 30 each year. The annual report shall show all benefits paid since the claim was initiated through June 30 of the current year. A final report shall be filed in lieu of the annual report if the claim is closed and the final report is filed before the date when the annual report is scheduled to be filed; and
- d. Final report filed at the time the claim is closed. The final report indicates that no further benefit payments are contemplated.

**11.7(2)** A reporter shall file a change to FROI and SROI reports whenever a reporter is made aware that information previously submitted is incorrect. The reporter shall file a change within 45 days after being made aware that previously submitted information is incorrect. Information for which a change shall be filed includes, but is not limited to, the injured employee’s social security number, date of injury, employer’s name, and injured employee’s name. A reporter shall also correct information used in calculation of the compensation rate including, but not limited to, marital status and number of exemptions, average weekly wage, and compensation rate at the time of the employee’s injury. If a final decision by the division of workers’ compensation or a court of law changes any of the previously submitted information, the attorney for the employer and insurance carrier shall notify the reporter. The reporter shall file a change within 45 days of the final decision.

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